

भारत का राजपत्र The Gazette of India

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं. 10]

नई दिल्ली, शनिवार, अप्रैल 12, 2003/चैत्र 22, 1925

No. 10]

NEW DELHI, SATURDAY, APRIL 12, 2003/CHAITRA 22, 1925

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)
PART II—Section 3—Sub-section (iii)

केन्द्रीय अधिकारियों (संघ राज्य क्षेत्र प्रशासनों को छोड़कर) द्वारा जारी किये गये आदेश और अधिसूचनाएं
Orders and Notifications issued by Central Authorities (other than the Administrations of Union Territories)

भारत निर्वाचन आयोग

शुद्धिपत्र

नई दिल्ली, 26 मार्च, 2003

आ.अ. 22.—निर्वाचन आयोग की तारीख 07-01-2003 की आदेश संख्या 76/उ.प्र.-वि.स./2002 में क्रम संख्याओं 220 से 227 के सामने स्तंभ 3 में विनिर्दिष्ट शब्द एवं अंकों के स्थान पर शब्द एवं अंक "191-नत्थूपुर" पढ़े जायेंगे।

[सं. 76/उ.प्र.-वि.स./2002]

आदेश से,

आनन्द कुमार, निदेशक (प्रशासन) एवं प्रधान सचिव

220 to 227, the words and figures "191-Natthupur" shall be read.

[No. 76/UP-LA/2002]

By Order,

ANAND KUMAR, Director (Admn.)-cum-Principal Secy.

नई दिल्ली, 31 मार्च, 2003

आ. अ. 23.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग 1996 की निर्वाचन अर्जी संख्या 2 में इलाहाबाद उच्च न्यायालय, लखनऊ बैंच, लखनऊ के तारीख 20 जुलाई, 1998 के निर्णय को एतद्वारा प्रकाशित करता है।

(निर्णय इस अधिसूचना के अंग्रेजी भाग में छपा है।)

[सं. 82/उ.प्र.-लो.स./2/96 (लख.)]

आदेश से,

आनन्द कुमार, निदेशक (प्रशासन)-सह-प्रधान सचिव

ELECTION COMMISSION OF INDIA

CORRIGENDUM

New Delhi, the 26th March, 2003

O. N. 22.—In the Election Commission of India's Order No. 76/UP-LA/2002, dated 7th January, 2003, for the existing words and figures in column 3 against Serial Nos.

916 GI/2003

(151)

New Delhi, the 31st March, 2003

O. N. 23.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the Judgment dated 20th July, 1998 of the High Court of Judicature

at Allahabad, Lucknow Bench, Lucknow in Election Petition No. 2 of 1996.

ANNEXURE

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD LUCKNOW BENCH LUCKNOW

ELECTION PETITION NO. 2 OF 1996

Under Sections 80/81 of the Representation of the
People Act, 1951.

Bhola Singh Son of Late Sri Beni Madhav Singh
.....Petitioner

Vs.

1. Raj Kumari Ratna Singh daughter of Late Raja
Dinesh Singh
2. Hari Dutt Son of Sri Narbada Prasad Tiwari
.....Respondents

Lucknow Dated : 20-7-98.

Hon A.N. Gupta, J.

In this Election Petition, the election of opposite party no. 1 to the Tenth Lok Sabha which was held in May, 1996 has been challenged. Now Tenth Lok Sabha has been dissolved and Eleventh Lok Sabha has come into existence. Learned Counsel for the petitioner states that in view of the changed situations, the petitioner does not press this petition. Learned Counsel for opposite party No. 1 does not press for costs, the petition is therefore dismissed. The petitioner shall be entitled to withdraw the security money deposited by him alongwith the petition under Section 117 of the Representation of Peoples Act.

Sd/-

T. by KSN

A. N. Gupta,

20-7-98.

Ex. by—

[No. 82/UP-HP/2/96(Luc)]

By Order,

ANAND KUMAR, Director (Admn.)-cum-Principal Secy.

नई दिल्ली, 3 अप्रैल, 2003

आ. अ. 24.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, हरियाणा राज्य से श्रीमती सुमित्रा महाजन और श्री हरेन्द्र सिंह मलिक के निर्वाचन को प्रश्नगत करते हुए श्री जयपाल सिंह द्वारा दाखिल निर्वाचन याचिका सं. 2002 का 27 में चण्डीगढ़ स्थित पंजाब और हरियाणा उच्च न्यायालय के तारीख 30 जनवरी, 2003 के आदेश को इसके द्वारा प्रकाशित करता है।

(आदेश इस अधिसूचना के अंग्रेजी भाग में छपा है।)

[सं. 82/ रा. स.-हरि./27/2002/2003]

आदेश से,
शरन पाल सिंह, सचिव

New Delhi, the 3rd April, 2003

O. N. 24.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the order of the High Court of Punjab and Haryana at Chandigarh dated 30th January, 2003 in Election Petition No. 27 of 2002 filed by Shri Jaipal Singh calling in question the election of Smt. Sumitra Mahajan and Shri Harendra Singh Malik as the Members of Council of States from the State of Haryana.

ANNEXURE

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CIVIL ORIGINAL SIDE

ELECTION PETITION NO. 27 OF 2002

Jaipal Singh Son of Ch. Dhajja Ram, resident of Plot No.
9-A, Sector 6, Faridabad (Haryana)Petitioner.

Vs.

1. Smt. Sumitra Mahajan
Wife of Shri O. P. Mahajan,
resident of Ward No. 8,
Hisar (Haryana)
2. Harendra Singh Malik
Son of Shri Jagjeet Singh,
resident of Village Dahar,
Tehsil Panipat, District Panipat
.....Respondents

Election Petition under Section 81 read with Sections 100 and 101 of the Representation of the People Act, 1951 praying that the Election of Respondents to the Council of States (Rajya Sabha) from the State of Haryana be set aside and petitioner be awarded costs.

Dated the 30th January, 2003

PRESENT

THE HON'BLE MR. JUSTICE JASBIR SINGH

For the Petitioner : Mr. S. C. Kapoor,
Senior Advocate, with
S/Shri Ashish Kapoor and
Mr. Rajneesh Chadwal,
Advocates

For the Respondent : Mr. R. S. Cheema,
Senior Advocate, with
S/Shri M. L. Saggat,
D. P. Singh and
K. S. Nalwa, Advocates

JUDGEMENT

Jashbir Singh, J.

Petitioner, by filing this Election Petition, has challenged the election of respondents to Rajya Sabha (Council of States) from the State of Haryana, result of which was declared on March 18, 2002. Petitioner has averred that he was registered as an elector at Sr. No. 535, Block No. 62, Mujeggat Plot No. 9A, Sector 6, Faridabad in the State of Haryana, as such, he was eligible to contest election to Rajya Sabha. It has further been averred that on occurring two vacancies in Rajya Sabha, which were to be filled up from the State of Haryana, a notification was

issued to fill up those vacancies vide which following schedule was fixed regarding election :—

“Last date of nominations : March 14, 2002
Date of scrutiny : March 15, 2002.
Date of withdrawal : March 18, 2002.
Date of polling, if required : March 27, 2002.”

Petitioner has stated that he had been a Member of Indian Administrative Service and had about forty years of service to his credit. He was fifty-nine and a half years of age and was eligible to seek ‘voluntary retirement’ and accordingly he applied for the same through proper channel on March 13, 2002. He also made a request that condition regarding notice period of three months for seeking ‘voluntary retirement’ be waived off and his request be accepted forth-with. He had also relinquished the charge of the post, which he was holding at that time, since he was not holding any office of profit with the government as on March 13, 2002, he was eligible to seek election to Rajya Sabha. His request was duly received by the Secretary to Government of India, Ministry of Personnel, Public Grievances and Pension, Department of Personnel and Training, New Delhi (in short appointing authority) and also in the office of Chief Secretary to Government of Haryana at Chandigarh. He also sent an intimation to the above mentioned authorities regarding the fact that he had relinquished charge of the post of O.S.D., Land Use Board, Haryana, Chandigarh, in the after noon of March 13, 2002. Petitioner has further averred that the cause for seeking voluntary retirement was the illness of his wife and other personal reasons. Petitioner further stated that after resigning, voluntarily, from his post, he filed his nomination papers to contest election of Rajya Sabha. In this petition, petitioner has further pleaded that on the date of scrutiny he was present and had brought to the notice of Returning Officer the factum of his ‘voluntary retirement’, rules governing such retirement, other conditions of service and also judgment of the apex Court reported as 2000(7) S.C.C. 390 but the Returning Officer showed total disregard to the All India Services (Death-cum-Retirement Benefits) Rules, 1958 (in short 1958 Rules), All India Services (Conditions of Service-Residuary Matters) Rules, 1960 (in short 1960 Rules), Fundamental Rules of 1922, above mentioned ruling of the Hon’ble Supreme Court and rejected his nomination papers on the ground that “service of three months’ notice” was a mandatory condition and since that period had not yet expired, petitioner shall be deemed to be in Government service and as such he was disqualified to contest election in view of provisions of Article 102 (1) (a) of the Constitution of India. Petitioner has alleged that action of the Returning Officer, in rejecting his nomination papers, was not justified as the Central Government in view of 1960 Rules had power to relax the conditions and to waive off three months’ notice period in case of an employee, who seeks voluntary retirement. Petitioner has further stated that since his nomination papers along with those of two other candidates were rejected, there was no contest, result was declared on March 18, 2002, and the respondents were wrongly declared elected as Members of the Rajya Sabha from the State of Haryana. By making above mentioned allegations, petitioner has challenged the election of respondents on the ground that improper rejection of his nomination papers had vitiated their

election, which, as such, is required to be declared annulled.

On scrutiny, election petition was found to have been filed within period of limitation and also found to be in order.

Upon notice, respondents appeared before this Court on July 31, 2002 through their counsel. They then filed a joint written-statement controverting averments made by the petitioner. preliminary objections were raised to the effect that averments contained in the election petition were vague, frivolous etc. and lacked material facts and particulars, as such, election petition was liable to be dismissed. It was further stated in the written-statement that nomination papers of the petitioner were rightly rejected by the Returning Officer since he was not qualified on the date of nomination and scrutiny to contest election in view of provisions of Article 102(1)(a) of the Constitution of India. As application of petitioner for ‘voluntary retirement’ was not accepted by the appointing authority, he was in service as on March 15, 2002, i.e., the date of scrutiny. Petitioner had not disclosed a material fact as to on which date he had received communication regarding acceptance of his resignation. On merits also, respondents controverted specifically all the averments made by the petitioner. It was specifically denied that petitioner was eligible to seek voluntary retirement and he had applied for the same through proper channel on March 13, 2002, with a request to waive off notice period. It was also denied that petitioner had relinquished charge of his post and he was no longer holding any office of profit with the Government on the date of his nomination. It was further denied that petitioner was eligible to seek election to Rajya Sabha. It was also denied that request of petitioner for voluntary retirement was duly received by the appointing authority and also by the Chief Secretary to Government of Haryana at Chandigarh. Respondents have further stated that at the time of scrutiny, petitioner was present and they raised an objection to the effect that since he, being in Government service, was holding an office of profit, he was disqualified to contest election to Rajya Sabha. That objection was upheld and his nomination papers were rejected. Respondents have also stated that mere moving an application for seeking voluntary retirement does not amount to an order of acceptance of resignation on March 13, 2002., itself. Petitioner had not deposited an amount equal to salary of three months in lieu of waiving notice period of three months. Respondents, by controverting all the averments made by the petitioner and stating that the election petition was vague, lacked in disclosure of material facts and not disclose a complete cause of action, prayed that the election petition be dismissed.

Petitioner filed replication to the written statement filed by respondents, wherein he controverted averments made in the written-statement and reiterated averments made by him in his election petition.

On the pleadings of the parties and as suggested by their counsel, following issues were framed on September 23, 2002 :—

- “1. Whether petition lacks in material facts and does not disclose any cause of action? OPR
2. Whether nomination paper of petitioner was wrongly rejected, if so, its effect? OPP
3. Relief.

Counsel appearing for respondents then stated that respondents did not wish to lead any evidence on issue No. 1 and prayed that matter be fixed for arguments on this issue and it be treated as preliminary issue. Counsel appearing for the petitioner had no objection to the prayer made by counsel for respondents. In view of consensus arrived at between the parties, matter was fixed for arguments on issue No. 1 as mentioned above.

Shri R. S. Cheema, Senior Advocate, appearing for the respondents, has vehemently contended that election petition filed by the petitioner is vague, it does not disclose material facts and as such does not constitute a complete cause of action on the basis of which any relief can be given to him. He, in that regard, has referred to provisions of Section 83(1)(a) of Representation of Peoples Act, 1951 (in short 1951 Act). To further support his argument, he has stated that in this election petition, petitioner has nowhere stated as to on which date his resignation letter was accepted by the competent authority. It has also not been mentioned as to whether his request for voluntary retirement was accepted and if so, on which date. It has nowhere been stated as to whether the petitioner had received any communication in that regard from the Government. Shri Cheema has further argued that unless these material facts are disclosed, no relief can be given to the petitioner, even if there is no denial/rebuttal by the respondents. He has also argued that reliance of petitioner upon 1958 Rules and 1960 Rules does not disclose, as to whether mere submission of request for voluntary retirement, is sufficient, and no further acceptance is needed by the competent authority. Since the petitioner has failed to mention any legal provision, on the basis of which it could be presumed that voluntary resignation would become effective, the movement it is tendered, by operation of law and no further action was needed by the competent authority, the petition is vague and lacks material facts and as such is liable to be rejected keeping in view provisions of Order VI Rule 16 and Order VII Rule 11 of the Code of Civil Procedure. He has also referred to various judgments of Hon'ble Supreme Court to contend that once it is found that an election petition lacks material facts and does not disclose a complete cause of action, it can be rejected summarily.

Arguments raised by Shri Cheema have vehemently been controverted and refuted by Shri S. C. Kapoor, Senior Advocate, appearing on behalf of the petitioner. He has stated that election petition contains full particulars and facts, on the basis of which relief can be granted to the petitioner. He has stated that before submitting his nomination papers, the petitioner had sent his request for voluntary retirement with a prayer that condition of three months' period notice be relaxed in his case. Petitioner has specifically stated in his petition that he was eligible to contest election to Rajya Sabha on the date of scrutiny of his nomination papers, which were improperly rejected by the Returning Officer. He further contended that all material facts and particulars have been pleaded in this petition. Further facts can be proved at the time when the evidence will be led by the petitioner. At this stage, since written statement filed by respondents is not to be taken note of, election petition cannot be rejected summarily. Shri Kapoor referred to 1958 Rules and 1960 Rules to say that after submission of his request for voluntary

retirement, petitioner was out of service and was not holding any office of profit under the Government and as such rejection of his nomination papers was not justified. Shri Kapoor has referred to judgments of their Lordships of the Supreme Court in *Arun Kumar Bose versus Mohd. Furkan Ansari and others*, A.I.R. 1983 Supreme Court 1311, *Ashwani Kumar Sharma versus Yaduvansh Singh and others*, A.I.R. 1998 Supreme Court 337, *Mahendra Pal Versus Ram Dass Malanger and others*, (2000) 1 Supreme Court Cases 261, *D. Ramachandran versus R. V. Janakiraman and others*, (1999) 3 Supreme Court Cases 267, to contend that since election petition filed by petitioner discloses all necessary material facts and particulars and complete cause of action, the same is required to be proceeded further and cannot be rejected at this stage.

Before taking note of arguments and counter arguments addressed by counsel for the parties, it is necessary to refer to certain provisions of the Constitution of India, 1951 Act, 1958 Rules and 1960 Rules relied upon by counsel for the parties.

Article 84 of the Constitution of India deals with qualifications of a person, who intends to be a Member of Parliament. Article 102 of the Constitution of India refers to disqualifications for membership of either house of Parliament. Relevant portion of Article 102(1)(a) reads as under :—

"102(1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament—if he holds any . . . Office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder."

Part VI of Chapter II of 1951 Act deal with presentation of election petitions. Section 80 envisages that no election shall be called in question except by way of election petition presented in accordance with the provisions of this Part. Section 81-A of 1951 Act provides that High Court having jurisdiction shall try an election petition. Section 81 of 1951 Act provides that election can be called in question on the basis of grounds as specified in Sections 100 and 101 of the 1951 Act by any candidate to that election or by any elector. It also envisages that election petition is required to be filed within 45 days from the date of election of a returned candidate. It also enumerates conditions which are necessary to be fulfilled at the time of filing of an election petition. Section 82 lays down as to who are the persons, necessary to be impleaded as respondents in an election petition. Section 83 of the 1951 Act deals with contents of an election petition, which reads as under :—

"83. Contents of petition.—(1) An election petition—

- (a) shall contain a concise statement of the material facts on which the petitioner relies;
- (b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and
- (c) shall be signed by the petitioner and verified

in the manner laid down in the Code of Civil Procedure, 1908 for the verification of pleadings:

(Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars, thereof.)

- (2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition."

Section 84 of 1951 Act discloses the relief which can be claimed by a petitioner. Section 87 clearly envisages that every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908 for the trial of suits. It also envisages that provisions of Indian Evidence Act, 1872, shall subject to the provisions of 1951 Act be deemed to apply in all respects to trial of an election petition. Section 100 of 1951 Act lays down the grounds on the basis of which an election of a returned candidate can be challenged and declared to be void. Relevant provisions of this Section read as under:—

"100. Grounds for declaring election to be void.—(1) Subject to the provisions of sub-section (2) if (the High Court) is of opinion

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) that any nomination has been improperly rejected;"

xxx xxx xxx

The High Court shall declare the election of the returned candidate to be void.

xxx"

Section 101 of 1951 Act envisages the grounds on which a candidate other than returned candidate may be declared to have been elected. Other provisions are not relevant for disposal of this election petition and as such need not be referred.

Rule 16 of 1958 Rules relating to death-cum-retirement benefits of Members of service, to which petitioner belongs, envisages that a member of the Service may, after giving at least three months previous notice in writing, to the State Government concerned, retire from service on the date on which such member completes thirty years of qualifying service on the date on which such member attains fifty years age or on any date thereafter. Sub-rule (2) of Rule 16 of 1958 Rules reads as under:—

"(2) A member of the Service may, after giving at least three months previous notice in writing, to the State Government concerned, retire from service on the date on which such member completes thirty years of qualifying service on the date on which such member attains fifty years age or on any date thereafter to be specified in the notice :

Provided that no member of the Service under suspension shall retire from service except with the specific approval of the State Government concerned. (2-A) A member of the service may, after giving three months previous notice in

writing to the the State Government concerned, retire from service on the date on which he completes 20 years of qualifying service or any day thereafter to be specified in the notice:

Provided that a notice of retirement given by a member of the service shall require acceptance by the State Government concerned if the date of retirement on the expiry of the period of notice would be earlier than the date on which the member of the Service could have retired from service under sub-rule (2)".

Rule 3 of 1960 Rules lays down that in case of undue hardship regarding application and conditions of service, Central Government may relax requirement of the Rules or Regulations as the case may be. Sub Rule (ii) of Rule 3 of 1960 Rules reads as under:—

"3. Power to relax rules and regulations in certain cases.—Where the Central Government is satisfied that the operation of

(i) any rule made or deemed to have been made under the All India Services Act, 1951 (61 of 1951), or

(ii) any regulation made under any such rule, regulating the conditions of service of persons appointed to an All India Service causes undue hardship in any particular case, it may, by order, dispense with or relax the requirements of that rule or regulation, as the case may be, to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner."

By now it is an established law by plethora of judgments of Hon'ble Supreme Court that to succeed in an election petition, the petitioner is supposed to state all the material facts, i.e. facts which, if established, would give to the petitioner the relief, which he is seeking. These material facts should be such that in case respondent has not put up appearance, the Court could have been in a position to give a verdict in favour of election petitioner. It is also established law that unless election petition discloses a complete cause of action on the basis of material facts, it cannot proceed further. It is also known by now that at this stage, Court is required to examine election petition without looking into written statement or denial by respondents and the Court can reject the petition, if it does not disclose a cause of action. As such the Court at this stage is supposed to look into election petition only and nothing else. It is also an established law that no amount of evidence can cure basic defect in the pleading. In this case, allegation of respondents is that since petitioner has failed to state material facts regarding acceptance of his voluntary resignation by competent authority, no relief can be granted to him.

To see whether petitioner has disclose material facts and election petition constitutes a complete cause of action, it is necessary to look into the averments made by the petitioner in this election petition. Relevant paragraphs No. 3 to 7 of election petition read as under:—

"3. THAT the petitioner, who belonged to Indian Administrative Service and had put in

about 40 years of Government service and was aged 59-1/2 years and, thus, fully eligible to seek voluntary retirement, applied for the same through proper channels on 13th March, 2002, with a request to waive of the condition of notice period and sought that he be retired forthwith with effect from 13th March, 2002 afternoon and also relinquished the charge. The petitioner was, therefore, no longer holding any office of profit with the Government and was, thus fully eligible to seek election to the council of States (Rajya Sabha). This request of the petitioner was duly received by Secretary to Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel and Training, New Delhi (hereinafter called the "APPOINTING AUTHORITY") and in the office of the Chief Secretary to Government of Haryana, Chandigarh and the petitioner relinquished the charge of the office of O.S.D Land Use Board, Haryana, Chandigarh, in the afternoon of 13th March, 2002, and information to this effect was also given to Appointing Authority and Chief Secretary to Government of Haryana, Chandigarh.

4. THAT it may be stated here that Smt. Kamla Sangwan wife of the petitioner was suffering from various ailments including chronic Renal Failure, Tubercular Generalized Lymphadenopathy, Left Tubercular Optic Neuritis and remained indoor patient in Batra Hospital and Medical Research Centre, New Delhi, during the period September 2001 to February 2002 for 80 days and was almost bed ridden ever after having been discharged from the hospital. She required personal care at home. It may also be stated here that to look after his wife, the petitioner remained on earned leave during the period commencing from 10th September, 2001, to 22nd February, 2002, for a total period of 103 days and it was due to this and other personal reasons that the petitioner was prompted to seek voluntary retirement and had also requested for waiving the period of notice. It may also be stated here that the petitioner was otherwise also going to superannuate on 31st October, 2002.

5. THAT the petitioner was, thus fully eligible to seek election to the Council of States from the State of Haryana as he was no longer holding any office under the Government having voluntarily retired on 13th March, 2002. The petitioner submitted his nomination papers to the Returning Officer duly proposed by a requisite number of the members of the Legislative Assembly. It may be stated here that the members of the Haryana Vidhan Sabha constitute the Electoral college for election of the members to the Council of States.

6. THAT at the time of scrutiny, the petitioner was present and not only brought to the notice of the Returning Officer the relevant provisions of the Rules pertaining to voluntary retirement

and other conditions of service but also cited a judgment of the Apex Court Reported (2000) 7 SCC 390 but the Returning Officer in total disregard of the All India Services Death-cum-Retirement Rules, 1958, the All India Services (Conditions of Service Residuary Matters) Rules, 1960, Fundamental Rules of 1922 and ruling of the Apex Court held that the service of three months notice was a mandatory condition and since the period of notice had not expired, the petitioner shall be deemed to be in Government service and, consequently rejected the Nomination papers of the petitioner holding him to be disqualified within the meaning of Article 102 (1)(a) of the Constitution of India. It may be stated here that the All India Services (Conditions of Service Residuary Matters) Rules, 1960, specifically provide for the power of the Central Government to make rules and regulations for matters pertaining to the conditions of service and also bestow power on the Government to dispense with or relax the requirement of any rule or regulation. Fundamental Rules, which are applicable to all the civil servants also specifically provide for power of the Government to waive three months notice. The Returning Officer also ignored all these provisions.

7. THAT the petitioner, as submitted above, was fully eligible and his nomination paper has been improperly rejected by the Returning Officer."

It is evident from the reading of above mentioned paragraphs of election petition that petitioner was a Member of Indian Administrative Service. He had put in about forty years of Service and was aged about 59½ years. He sent his request for voluntary retirement through letter dated March 13, 2002, addressed to the Secretary to Government of India, Ministry of Personnel at New Delhi. He also relinquished his charge on March 13, 2002 (A.N.) and intimated that fact to the Chief Secretary to Government of Haryana, Chandigarh, vide letter dated March 13, 2002. He then filed his nomination papers, which were rejected by the Returning Officer on March 15, 2002. He claimed that he was eligible to contest election to Rajya Sabha having voluntarily retired from service on March 13, 2002. Order passed by the Returning Officer has not been placed on record. However, it is apparent from the averments as mentioned above that his nomination papers were rejected by the Returning Officer on the ground that since period of three months' notice had not then expired, he would be deemed to be in service and was not eligible to contest in view of the provisions of Article 102(1)(a) of the Constitution of India.

Now it is to be seen whether on the basis of these averments alone, without looking into written statement, any relief can be given to the petitioner. As per provisions of Article 102 (1)(a) of the Constitution of India, to hold an office of profit under the Government, is a disqualification to contest election to Rajya Sabha. It is not coming out from the records as to whether petitioner was not holding office of profit with the Government on the date of

scrutiny? Whether by mere forwarding his voluntary retirement letter, he ceases to be a Government servant? Certain facts, which are material, are not coming out from the pleadings. Petitioner has not disclosed as to when his letter dated March 13, 2002 seeking voluntary retirement was received by the competent authority at Delhi? Whether his request for voluntary retirement was accepted or not? If accepted, on which date? Petitioner has also failed to disclose a material fact as to whether his request for relaxation qua mandatory provision of three months' notice period was accepted by the competent authority or not? A conjoint reading of Rule 16(2) of 1958 Rules and Rule 3(ii) of 1960 Rules (upon these Rules reliance was placed by the petitioner before the Returning Officer and before this Court also) clearly indicates that for a Member of Service, to get voluntary retirement, it is mandatory to give at least three months' prior notice in writing after he had attained other requisite qualifications to retire, voluntarily. That condition can be relaxed in case undue hardship is shown in a particular case. It is apparent from the letter dated March 13, 2002 that after asking for voluntary retirement due to compelling circumstance petitioner had made a request to waive of condition of notice period. Relevant portion of the letter reads as under:—

"I am due for retirement on 31-10-2002, but due to certain compelling personal circumstances, I am unable to continue in service any longer. I, therefore, seek voluntary retirement forthwith from today i.e. 13-3-2002 A.N.

You are requested to waive off the condition for notice period and accept my request for voluntary retirement."

A bare reading of contents of above mentioned letter indicates no undue hardship. Under these circumstances, it cannot be presumed that competent authority was bound to accept his letter of voluntary resignation. From the pleadings of the election petition, it is not coming out as to what was the undue hardship on the basis of which petitioner had claimed relaxation of three months' mandatory period qua notice before voluntary retirement.

Since material facts, referred to above, were not disclosed in the election petition, this Court feels that necessary relief cannot be given to the petitioner. There is a vacuum. Petitioner, after contending that he had tendered his resignation and asked for relaxation of Rules regarding three months' notice period, has not made any further averment whether in fact that request was allowed and resignation was accepted? If so, on which date? Unless that comes out from the records, petitioner cannot be presumed to be eligible to contest election as on the date of scrutiny.

Their Lordships of the Supreme Court, after discussing various judgments on the subject, in **Hari Shanker Jain versus Sonia Gandhi**, (2001) 8 Supreme Court Cases 233, in paragraphs 23 and 24 opined as under:—

"23. Section 83(1)(a) of RPA, 1951 mandates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. By a series of decisions of this Court, it is well settled that the material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words, they must be such facts as

would a basis for the allegations made in the petition and would constitute the cause of action as understood in the Code of Civil Procedure, 1908. The expression "cause of action" has been compendiously defined to mean every fact which it would be necessary the plaintiff to prove, if traversed, in order to support his right to the judgment of court. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of the party is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. [See **Samant N. Balkrishna v. George Fernandez**, (1969) 3 SCC 238; (1969) 3 SCR 603, **Jitender Bahadur Singh v. Krishna Behari**, (1969) 2 SCC 433]. Merely quoting the words of the section like chanting of a mantra does not amount to stating material facts. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary. In **V.S. Achuthanandan v. P.J. Francis**, (1999) 3 SCC 737, this Court has held, on a conspectus of a series of decisions of this Court, that material facts are such preliminary facts which must be proved at the trial by a party to establish existence of a cause of action. Failure to plead "material facts" is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after the time limit prescribed for filing the election petition.

24. It is the duty of the court to examine the petition irrespective of any written statement or denial and reject the petition if it does not disclose a cause of action. To enable a Court to reject a plaint on the ground that it does not disclose a cause of action, it should look at the plaint and nothing else. Courts have always frowned upon vague pleadings, which leave a wide scope to adduce any evidence. No amount of evidence can cure basic defect in the pleadings."

It is clear from leading of pleadings in this case that the election petition lacks in disclosing material fact. An election petition is based upon rights, which are purely creature of a statute and if statute requires a particular thing to be done in a particular manner and if any provision of the statute is mandatory. Court cannot exercise any power to waive non-compliance of the same. Section 83 (1)(a) of 1951 Act mandates that an election petition shall contain a concise statement of material facts, on which petitioner relies. In this case, this Court feels that petitioner has failed to comply with above mentioned provisions of the Statute, which have been held to be mandatory by their Lordships of the Supreme Court in **Shri Udhav Singh versus Mathav Rao Scindia**, (1977) 1 Supreme Court Cases 511. In that judgment, their Lordship of the Supreme Court after referring to the provisions of Section 83 of the 1951 Act in paragraphs No. 41 and 42 opined as under:—

"41. Like the Code of Civil Procedure, this section also envisages a distinction between "material facts" and "material particulars". Clause (a) of Sub-section (1) corresponds to Order 6, Rule 2, while clause (b) is analogous to Order 6, Rules 4 and 6

of the Code. The distinction between "material facts" and "material particulars" is important because different consequences may flow from a deficiency of such facts or particulars in the pleading. Failure to plead even a single material fact leads to an incomplete cause of action and incomplete allegations of such a charge are liable to be struck off under Order 6 Rule 16, Code of Civil Procedure. If the petition is based solely on those allegations, which suffer from lack of material facts, the petition is liable to be summarily rejected for want of a cause of action. In the case of a petition suffering from a deficiency of material Particulars, the court has a discretion to allow the petitioner to supply the required particulars even after the expiry of limitation.

42. All the primary facts, which must be proved at the trial by a party to establish the existence of a cause of action or his defence, are "material facts". In the context of a charge of corrupt practice, "material facts" would mean all the basic facts constituting the ingredients of the particular corrupt practice alleged, which the petitioner is bound to substantiate before he can succeed on that charge. Whether in an election petition, a particular fact is material or not, and as such required to be pleaded is a question which depends on the nature of the charge levelled, the ground relied upon and the special circumstances of the case. In short, all those facts which are essential to clothe the petitioner with a complete cause of action, are "material facts" which must be pleaded and failure to plead even a single material fact amounts to disobedience of the mandate of Section 83(I)(a)."

The contention of Shri S.C. Kapoor, Senior Advocate, that the petitioner was eligible to contest the election, in dispute, and he had disclosed all material facts in his election petition on the basis of which relief claimed can be given to him is devoid of any force. As has been discussed in the earlier parts of this judgment, this election petition lacks in disclosing material facts. Reliance by Shri Kapoor on Arun Kumar Bose's case (Supra) and Ashwani Kumar's case (Supra) is not justified. In those cases, their Lordships of the Supreme Court found it, as a matter of fact, that election petition does disclose material facts and complete cause of action, on the basis of which relief, in the absence of any opposition, could have been granted to the petitioner therein. With due respect, ratio of above-mentioned judgments is not applicable to the facts of this case. Similarly, judgment of their Lordships of the Supreme Court in Mahendra Pal's case (Supra) rather supports the case of the respondents. In that judgment their Lordships of the Supreme Court opined that failure to implead even a single material fact leads to an incomplete cause of action and incomplete allegation of such a charge are liable to be struck off under Order VI Rule 16 of the Code of Civil Procedure. In D. Ramachandran's case (supra), their Lordships of the Supreme Court found, as a matter of fact, that some of the allegations in that election petition were

bereft of material facts and did not disclose a cause of action. Their Lordships opined that averments in the election petition could not be dissected into several parts and it was not permissible to look into whether each part disclosed a complete cause of action or not. This is not the situation in the case in hand. As has been discussed earlier, even if averments made in the petition are presumed to be correct without looking into written statement, relief prayed for can not be granted to the petitioner.

After arriving at above conclusion, whether is it justified to proceed further and record evidence in this election petition or to dismiss it at this stage, is a question, to be deliberated and answered. Their Lordships of the Supreme Court in Shri Udhav Singh's case (supra) opined that failure to plead even a single material fact leads to an incomplete cause of action and incomplete allegations of such a charge are liable to be struck off. To the same effect is the opinion expressed in Azhar Hussain versus Rajiv Gandhi. AIR 1986 Supreme Court 1253, in which it was opined that "the contention that even if the election petition is liable to be dismissed ultimately it should be so dismissed only after recording evidence and not at the threshold is thoroughly misconceived and untenable argument." It was also opined that if the facts of the case and law so require, the controversy in election petition is required to be set at rest at the earliest."

In this case, petitioner has failed to aver and plead that his resignation was accepted by the competent authority before the date of scrutiny and his prayer to waive off notice period of three months before seeking voluntary retirement was actually accepted. Even during arguments, no order accepting the request of petitioner for voluntary retirement was placed on record. Non-disclosure of above-mentioned material fact goes to the root of the case and as per established practice, it cannot even be allowed to be rectified even by allowing the petitioner to amend his petition. In the absence of disclosure of above mentioned material facts, petitioner cannot be deemed to be eligible to contest election and shall be presumed to have suffered disqualification as envisaged under Article 102, Sub-section (1) of the Constitution of India, i.e., he was holding an office of profit under the Government as on the relevant date. This Court feels that allowing the petitioner to lead evidence in support of his petition will be a futile exercise. This Election Petition, in view of the facts of the case, is bound to fail even after that.

In view of ratio of judgments mentioned above and facts of the case, issue No. 1 is decided in favour of respondents and against the petitioner. Consequently, election petition fails and the same is dismissed with no order as to costs.

January 30, 2003

JASBIR SINGH, JUDGE

[No. 82/CS-HR/27/2002/2003]

By Order,

SHARAN PAL SINGH, Secy.